REMARKS

In view of the following discussion, the Applicants submit that none of the claims now pending in the application are anticipated under the provisions of 35 U.S.C. § 102. Thus, the Applicants believe that all of these claims are now in allowable form.

I. REJECTION OF CLAIMS 16-20 UNDER 35 U.S.C. § 102

The Examiner rejected claims 16-20 as being anticipated under 35 U.S.C. § 102 by Patrick, et al. (U.S. Patent Publication No. 2004/0128396, published on July 1, 2004, hereinafter referred to as "Patrick"). The Applicants respectfully traverse the rejection.

Patrick teaches adaptable accelerated content streaming. (See Patrick, Abstract). Patrick teaches a user requests content from a server. (See Patrick, para. [0027]). Then the server identifies the amount of currently available bandwidth to calculate the amount of bandwidth on the server to allocate for accelerated streaming. (See *Id.* at para. [0028]).

The Examiner's attention is directed to the fact that Patrick fails to teach or to suggest the novel concept of a method for instructing a plurality of servers to each operate a bandwidth method in response to receiving the access request, the bandwidth method determining available bandwidth and selecting an identified server in response to receiving the bandwidth indication from each of the plurality of servers, as positively claimed by Applicants' independent claim 16. Specifically, Applicants' independent claim 16 recites:

> 16. A method of accessing a server comprising the steps of:
> receiving an access request from a client;
> instructing a plurality of servers to each operate a bandwidth method in response to receiving the access request, the bandwidth method determining available bandwidth;
> receiving a bandwidth indication from each of the plurality of servers;
> selecting an identified server in response to receiving the bandwidth indication from each of the plurality of servers; and
> redirecting the client to the identified server. (Emphasis added.)

In one embodiment, the Applicants' invention teaches a method of accessing a server comprising instructing a plurality of servers to each operate a bandwidth method in response to receiving the access request, the bandwidth method determining

available bandwidth and selecting an identified server in response to receiving the bandwidth indication from each of the plurality of servers. For example, the bandwidth probe may measure bandwidth performance measures such as throughput, delay and packet loss to determine which server a client should be directed to. (See e.g., Applicants' specification, p. 9, para. [0027].)

Patrick fails to anticipate the Applicants' invention because Patrick fails to teach or to suggest a method for instructing a plurality of servers to each operate a bandwidth method in response to receiving the access request, the bandwidth method determining available bandwidth and selecting an identified server in response to receiving the bandwidth indication from each of the plurality of servers. To illustrate, Patrick teaches a client request for content is directed to a proxy device and then to a source server or to a source server directly that contains the requested content. (See Patrick, para. [0017]). Notably in Patrick, the server is selected based on which server possess the requested content and not in response to receiving the bandwidth indication from each of the plurality of servers, as taught by the Applicants' invention. Patrick only teaches that the amount of available bandwidth is identified after the server is selected to serve the client request. (See Patrick, para. [0027] – [0028]). As a result, unlike the Applicants' invention which selects a server based on available bandwidth after determining available bandwidth on each of a plurality of servers, Patrick teaches that a server is selected based on which server contains the content requested by a client and only calculates bandwidth **after the server is already selected**.

Moreover, Patrick appears to only teach that the total amount of bandwidth is calculated for the selected server and not each of a plurality of servers, as taught by the Applicants' invention. Therefore, Patrick clearly fails to anticipate the Applicants' independent claim 16.

In addition, dependent claims 17-20 depend from independent claim 16 and recite additional limitations. As such, and for the exact same reason set forth above, the Applicants submit that claims 17-20 are also patentable and not anticipated by Patrick. As such, the Applicants respectfully request the rejection be withdrawn.

CONCLUSION

Thus, the Applicants submit that all of these claims now fully satisfy the requirements of 35 U.S.C. § 102. Consequently, the Applicants believe that all these claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring the issuance of a final action in any of the claims now pending in the application, it is requested that the Examiner telephone Mr. Kin-Wah Tong, Esq. at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully Submitted,

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